

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Patricia L. Preiner,
Petitioner-Appellant.

v.

Decatur County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-27-0197
Parcel No. 13.02.387.006

On February 28, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The appellant Patricia L. Preiner was represented by Daniel L. Manning of Lillis O'Malley Olson Manning Pose & Van Dike, Des Moines, Iowa, and submitted evidence in support of her appeal. The Decatur County Board of Review designated County Attorney Lisa Hynden Jeanes as its counsel and participated by telephone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Patricia L. Preiner owner of property located at 318 E Main Street, Lamoni, Iowa, appeals from the Decatur County Board of Review decision reassessing her property. The real estate was classified commercial for the January 1, 2011, assessment and valued at \$548,343; representing \$16,930 in land value and \$531,413 in improvement value.

Preiner protested to the Board of Review on the grounds that the property was not equitably assessed compared to other like properties under Iowa Code section 441.37(1)(a) and that the property was assessed for more than authorized by law under section 441.37(1)(b). In response to the protest,

the Board of Review granted partial relief. The Board of Review reduced the assessed value to \$398,858; representing \$16,930 in land value and \$381,928 in improvement value.

Preiner then appealed to this Board asserting the same grounds. Preiner values the property at \$250,000.

The subject property is a three-story, 20-unit, brick apartment building with a laundromat facility on the first floor. It was built in 1979. The property was totally remodeled from 2004 to 2006. Each of the twenty units has one bedroom and one bathroom. The total square footage is 15,758 square feet, including 1200 square feet used as the laundromat. The site is a 109.3 foot by 172 foot corner lot.

Patricia Preiner testified she purchased the property in 2006 from Yehia Ibrahim for \$1,000,000. Ibrahim had purchased the subject property in 2003 for \$270,000, then totally remodeled the structure and added an elevator. Preiner stated the \$1,000,000 purchase price included non-taxable personal property.

Preiner testified at the time she purchased the property in a 1031 exchange, the property was completely occupied and the units rented for \$475 per month. Rates stayed at this price from 2006 through 2010 and included all utilities. Preiner stated in 2010 Graceland University announced that all students would be required to live on campus. In fact, two new housing buildings opened on campus in September 2011. Preiner was forced to lower her rent from \$475 per unit to \$350 per unit in 2011 and still pays all utilities. Apparently, 90% of the Laundromat use came from the students. Preiner submitted income and expense information for the years 2009 to 2011. The net income for 2009 was \$62,113 and 2010 was \$19,414. Preiner showed a net loss of \$14,841 in 2011. This Board notes the 2011 information reflects the year following the January 1, 2011, assessment date.

Preiner testified she tried to determine a fair market value of the subject property by developing a stabilized income approach. Preiner determined a gross income of \$128,400 and used a 30%

vacancy rate to determine an adjusted income of \$89,000. She made an adjustment for expenses without property taxes to arrive at a net operating income of \$34,800. Preiner then determined that a proper capitalization rate including property tax (4.9%) would be 14.4%. This would generate a value close to \$240,000. Preiner is of the opinion that no other comparable sales exist in the Lamoni market.

James Fleming, Decatur County Assessor, testified on behalf of the Board of Review. Fleming testified he has been the assessor for seventeen years and never used the income approach to assess property. Instead he uses the market value to assess property. He explained that he uses the *Iowa Real Property Appraisal Manual* to get these base costs and adjusts for local market conditions. We note this is different from only doing the sale comparison approach to value; however, by adjusting the *Manual* for the market, the assessor does consider sales. Fleming stated the Board of Review reduced the original assessed value based on only one sale of an 8-unit apartment building that occurred in June of 2008 for \$142,001. He stated that Preiner purchased the subject property for \$1,000,000. He based this on the amount of real estate transfer tax paid. Fleming is of the opinion he used the market approach to assess property. When questioned, he testified he was not familiar with the term "other factors," but he stated he knows there are three approaches to valuation including comparable sales, cost, and income. He believes information is lacking to do the income approach to value because it would be difficult to establish a cap rate. It would appear he uses only the cost manual to value properties.

Jim Johnson, a long-time Board of Review member, testified in all his year on the Board of Review, they have never used the income approach. Johnson has never appraised property and is only "somewhat familiar with the income approach." Johnson testified that although the Board of Review had a motion to have an appraisal done on the property, after the Board of Review returned from lunch it decided not to have an appraisal completed. Johnson said they relied on the one comparable sale from 2008. Like Fleming, Johnson believes that transfer tax is based on real estate only, that it

excluded non-taxable property. We find Iowa Code section 428A(1) is clear that transfer tax includes personal property unless stated separately.

It is clear from the record that comparable sales of three-story apartments were not available in this market area. Therefore, other factors may be used to determine fair market value. Fleming testified he did not have the data or experience to do the income approach. However, he did use the *Iowa Real Property Appraisal Manual* and, in his opinion, adjusted for the market. Preiner attempted to testify as to how she would do a restructured income approach. However, it was clear she was not well versed in appraisal methods, and her counsel needed to lead her through the income approach. Additionally, we question how she developed her capitalization rate, and she was unable to clearly articulate how it was developed.

The certified record included information from Yehia Ibrahim who represented Preiner at the Board of Review. The data included tax paid per square foot, what the property may be listed for, and submitted general income information. Ibrahim did not testify or do an appraisal. Also, in the record is what appears to be part of a 2009 appraisal by Russ Manternach of Commercial Appraisers of Iowa, Inc., West Des Moines, Iowa, for refinancing the subject property. However, an appraisal was never submitted. We give Ibrahim's and Manternach's partial and dated evidence no weight.

We find that although Preiner attempted to establish her property was over assessed using an income approach to value, she was not clear on how a cap rate was determined or how it was restated. While it appears clear the changes by Graceland University have now impacted the rental market in Lamoni, Preiner's 2011 data is after the assessment date. It could, however, indicate an even lower assessment in the future. The Board of Review did, in fact, lower the assessment from \$548,343 to \$398,858 which may also account for the change in market condition. Preiner did not meet her burden with the restructured income approach to show the property is over-assessed. Therefore, we must affirm the assessment determined by the Decatur County Board of Review.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable property in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a)

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market

value. § 441.21(1). Preiner did not provide sufficient evidence to show the property was inequitably assessed under either test.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekoloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). There is statutory preference for establishing market values using sales of comparable properties. *Soifer v. Floyd County Board of Review*, 759 N.W.2d 775, 779 (Iowa 2009). The issue of comparability has two facets: the property must be comparable and the sale of that property must be a “normal transaction”. *Id.* at 782-83. When sales of other properties are offered, they must be adjusted for differences that affect market value. *Id.* at 783. These differences could include size, age, use, condition and location, among others. *Id.* In addition, if a sale is “abnormal” or not arms-length, it must be analyzed to determine if an adjustment is necessary. *Id.* Preiner’s evidence did not establish a market value for the subject property that is less than its assessment.

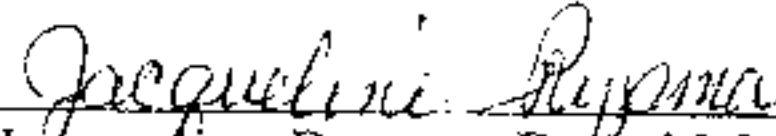
Viewing the evidence as a whole we determine that substantial evidence is lacking to support Preiner’s claim of being inequitably or over assessed as of January 1, 2011. We, therefore, affirm the Preiner property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment as of January 1, 2011, is \$398,858; representing \$16,930 in land value and \$381,928 in improvement value.

THE APPEAL BOARD ORDERS the assessment of the Preiner property located at 318 E. Main, Lamoni, Iowa, as determined by the Decatur County Board of Review is affirmed.

Dated this 26 day of April 2012.



Richard Stradley, Presiding Officer



Jacqueline Rypma, Board Member



Karen Oberman, Board Member

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 4-26, 2012.

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier

Signature [Signature]